



Costs Decision

Hearing Held on 4 May 2017

Site visit made on 4 May 2017

by R C Kirby BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22nd June 2017

Costs application in relation to Appeal Ref: APP/M9496/W/16/3156948 Riverside Business Park, Buxton Road, Bakewell, Derbyshire DE45 1GS

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Riverside Business Park Ltd for a full award of costs against Peak District National Park Authority.
 - The Hearing was in connection with an appeal against the grant subject to conditions of planning permission for the demolition of existing industrial units and construction of replacement employment floorspace, improvements to existing site access, parking, landscaping and other associated works.
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Decision

1. The application for costs is refused.

The Submissions for Riverside Business Park Ltd

2. The applicant submits that the National Park Authority (NPA) acted unreasonably in attaching a condition requiring a new road access to the business park prior to the commencement of development. Such a condition was not reasonable or necessary. The condition was not recommended by the Highway Authority, the Planning Officer or any statutory consultee.
3. The condition is contrary to the requirements of Local Plan Policy LB7. This policy clearly states that a new access to the Riverside Business Park (RBP) (formerly Lumford Mill) is only required in the event of a net increase in floorspace. It is submitted that there are no material considerations that outweigh this policy position.
4. The proposed development would not result in an increase in floorspace at the appeal site. It is therefore compliant with development plan policy. There is no evidence that the reduction in floorspace is expected to give rise to any material increase in vehicle movements. Vehicle movements would not be any greater than could take place under current planning controls.
5. Condition No 3 also refers to a planning permission which has not been implemented and expired the day after the grant of planning permission. It is therefore not possible to discharge condition No 3. Condition No 3 is therefore prima facie not capable of being complied with and therefore unlawful for this reason alone.
6. The NPA has prevented and delayed development which should clearly have been permitted, having regard to its accordance with the development plan,

national policy and any other material considerations; failed to produce evidence to substantiate the imposition of the (disputed) condition and imposed a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise or reasonable, thereby conflicting with the guidance on planning conditions and obligations in the National Planning Policy Framework.

7. Furthermore, the late submission of evidence by the NPA, which was rejected by the Planning Inspectorate, necessitated extra expense for the applicant as a response on procedure was produced by a planning consultant.

The Response by Peak District National Park Authority

8. The NPA agreed that the disputed condition contained a transcription error as set out in its statement of case. The condition was imposed because the Committee felt that there were exceptional circumstances. Had it not imposed the condition planning permission would have been refused on the following grounds:
 - 1) Strain on current access routes that would be caused by heavy construction traffic;
 - 2) The need to protect the safety and amenity of residents;
 - 3) The piecemeal development of the site would not be consistent with policy LB7; and
 - 4) The impact of the proposed passing places on the character of the area.
9. There is no reason in law why the Planning Committee may not make decisions on planning applications contrary to officer's recommendations. The Planning Committee considered relevant policies as set out in the Committee report and weighed in the balance other material considerations.
10. It is clear from the notes attached to the decision notice why the NPA considered that the provision of the new access was necessary. Its decision was taken following a visit to the site and after hearing representations from a local resident who advised the Committee that the Highway Authority had not taken into account traffic in Holme Lane and Lumford when it compiled its consultation response. Members of the Committee considered that the proposal would intensify traffic using the accesses to the site, to the detriment of the safety and amenity of the local area.
11. The NPA's e-mail to the Planning Inspectorate was not new evidence; it was informative as to the specific issues the NPA felt should be discussed at the Hearing. This was confirmed in the covering e-mail from Mr Shiels. No new evidence was presented at the Hearing by the Council or its representative.

Reasons

12. Irrespective of the outcome of an appeal, the Planning Practice Guidance (PPG) advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
13. The PPG makes it clear that parties in planning appeals normally meet their own expenses. All parties are expected to behave reasonably to support an

- efficient and timely process. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. Each party is required to behave reasonably in respect of procedural matters at the appeal and with respect to the substance of the matter under appeal.
14. The Committee made its decision after considering a detailed officer report containing the planning history of the site, development plan policies and consultation responses. A number of concerns were raised by local residents and the Town Council including the suitability of the accesses to serve the development. The Committee familiarised themselves with the site and its surroundings, making a visit prior to considering the development proposal.
 15. Whilst the scheme does not result in conflict with LP Policy LB7, which is a site specific policy for the RBP; other policies contained within the development plan cannot be disregarded. Policies LT18 of the LP and Policy GSP3 of the Core Strategy¹ are also relevant in so far as they relate to highway safety and the provision of safe access arrangements. Having taken into account local concern in respect of the accesses to the site, it was not unreasonable of the Committee to attach weight to these concerns in the determination of the planning application. Although the imposition of the condition may have delayed development on the site, it was not unreasonable of the Council to arrive at the decision it did, after considering the merits of the case.
 16. However, whilst correcting the application number to which the new bridge access permission relates early on in the appeal process, and describing the character of the accesses that serve the RBP, I found that the NPA failed to substantiate its concerns in respect of the traffic movements that the scheme would generate and the impact this would have on highway safety. Criticism of the applicant was made at the Hearing that existing traffic flows from Pinelog were not submitted in evidence. The NPA could have presented this evidence to me so that a comparison could be made with the applicant's predicted traffic flows. No such evidence was presented. In this regard I find that the NPA failed to substantiate its concern which amounts to unreasonable behaviour.
 17. Notwithstanding my finding above, I consider that the work undertaken by the applicant in defending the appeal was a necessary part of the case to demonstrate the impact of the scheme on highway safety and the character and appearance of the area. The expense of employing consultants in this regard was not therefore wasted or unnecessary.
 18. In terms of the concern raised about the late submission of evidence, I can confirm that I have not seen a copy of the e-mail referred to. This was returned to the NPA as it was submitted outside of the appeal timetable. I am therefore unable to conclude one way or the other whether this document included new evidence. I appreciate that it would have taken the applicant time and expense to provide a response to this e-mail, however, such a response was not necessary as this matter was dealt with directly by the case officer for the appeal.
 19. Taking these matters into account, I conclude that the NPA acted unreasonably in the appeal process. However, this did not result in unnecessary or wasted expense on the applicant's behalf. The work undertaken by the applicant was a

¹ Peak District National Park Local Development Framework Core Strategy Development Plan Document

necessary part of the appeal process. Unreasonable behaviour resulting in unnecessary and wasted expense has not therefore been demonstrated in this case.

20. The application for an award of costs therefore fails.

R C Kirby

INSPECTOR